

Appl. No. 10/654,362  
Amdt. Dated February 24, 2005  
Reply to Office action of September 24,

**REMARKS/ARGUMENTS**

Claims 1-10 are pending in the instant application. Claims 1-10 stand rejected under the judicially-created doctrine of obviousness-type double patenting as being unpatentable over claims 1-15 of U.S. Patent No. 6,223,918. Claims 1-2 and 6-10 stand rejected under the judicially-created doctrine of obviousness-type double patenting as being unpatentable over claims 1-8 of U.S. Patent No. 6,659,296. Claims 3-5 stand rejected under 35 U.S.C. §101 as claiming the same invention as that of claims 1 and 3-4 of United States Patent No. 6,659,296. Claims 1-2 and 7-10 stand rejected under 35 U.S.C. §102(b) as being anticipated by United States Patent No. 5,316,163 to Von Schukmann. Claims 1-10 have been amended to more particularly claim the instant invention. None of the amendments constitute new matter in contravention of 35 U.S.C. §132. Reconsideration is respectfully requested.

Claims 1-10 stand rejected under the judicially-created doctrine of obviousness-type double patenting as being unpatentable over claims 1-15 of U.S. Patent No. 6,223,918. This rejection is respectfully traversed.

The present invention claims a cap for a container which includes a cover member that provides a removable portion to allow access to a surface of a stopper used to plug a bottle or other suitable container. The removable portion of the cap is surrounded by a protective portion extending about a user engageable member which allows for the removable portion to be removed. The protective portion attaches to the cap at an edge of the cover member.

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The '918 patent claims a package comprising a container with a mouth, a stopper removably inserted into the mouth, and a cap overlying said stopper. The cap includes a removable portion which can be removed to gain access to the stopper, and an engageable member for operation by a user to remove the removable portion. The cap includes a wall extending generally about the periphery of the engageable member to protect it from accidental operations or entanglement. The wall has at least one opening therethrough, and the container and the cap are formed from plastics material.

The package claimed by the '918 patent fails to provide any detail on how the wall is formed with the cap. The present invention, conversely, claims that its protective portion must attach to the cap at the edge of its cover member. Applicant respectfully submits that these details on the attachment of the protective portion are patentably distinct over the claims of the '918 patent. Reconsideration and withdrawal of the rejection are respectfully requested.

Claims 1-2 and 6-10 stand rejected under the judicially-created doctrine of obviousness-type double patenting as being unpatentable over claims 1-8 of U.S. Patent No. 6,659,296. This rejection is respectfully traversed.

The '296 patent claims a cap for a container, comprising a moulding. The moulding comprises a retaining portion for engaging the container and retaining the cap thereon, a frangibly removable portion which is removable to expose at least partly a closure member for the container, and a user engageable member operable by a user to remove the removable

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portion. The cap further includes a protective portion for the engageable member and provided radially outwardly thereof. The protective portion is formed separately of the moulding and is attached thereto, such that the protective portion comprises a wall which extends generally about the periphery of the engageable member. The wall includes at least one opening therethrough.

Applicant respectfully submits that as the claims of the '296 patent fail to provide any detail on how or where its protective portion is attached to the moulding, the instant claims are therefore patentably distinct thereover. Reconsideration and withdrawal of the rejection is respectfully requested.

Claims 3-5 stand rejected under 35 U.S.C. §101 as claiming the same invention as that of claims 1 and 3-4 of United States Patent No. 6,659,296. This rejection is respectfully traversed.

Applicants respectfully submit that the claims of the instant application, as amended, fail to claim the same invention. Applicant notes that the above-identified distinctions between the claims of the '296 patent and the instant claims prevents any finding of cross-reading between the claim sets as set forth by the Court of Appeals for the Federal Circuit in Carmen Industries, Inc. v. Wahl, 724 F.2d 932, 220 U.S.P.Q. 481 (Fed. Cir. 1983). Reconsideration and withdrawal of the rejection are respectfully requested.

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Claims 1-2 and 7-10 stand rejected under 35 U.S.C. §102(b) as being anticipated by United States Patent No. 5,316,163 to Von Schukmann. This rejection is respectfully traversed.

Von Schukmann discloses a cap for a bottle having both an engageable member and a protective portion formed about it. The bottle has a stopper plugging its open end. The cap threadably engages an inner cap which includes several vertically depending and spaced strips. The two caps cooperate in forcing the stopper agasing the neck of the bottle.

Applicant respectfully submits, however, that the protective portion is formed as a unitary member with the cap body. Therefore, Von Schukmann fails to disclose each and every element of the presently claimed invention. Moreover, Von Schukmann fails to disclose, teach, or suggest both forming the protective portion separately from the cap body, and how or where the cap body could be formed so as to accept and retain a separate exterior component. Therefore, as Von Schukmann fails to disclose, teach, or suggest the invention as claimed, Applicants respectfully submit that the instant invention is patentably distinct thereover. Reconsideration and withdrawal of the rejection are respectfully requested.

In view of the amendments and remarks hereinabove, Applicant respectfully submits that the instant application, including claims 1-10, is patentably distinct over the prior art. Favorable action thereon is respectfully requested.

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Any questions with respect to the foregoing may be directed to Applicant's  
undersigned counsel at the telephone number below.

Respectfully submitted,



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